D.B. CIVIL WRIT PETITION NO.3976/2006

Union of India & Ors.
Vs.
Nankoo Ram & Ors.

Date of Order :: 13-10-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Kuldeep Mathur, for U.O.I.
Shri Manoj Bhandari, for the respondents.

This writ petition on behalf of the Union of India and the Central Bureau of Narcotics and their officials is directed against the decision of the Central Administrative Tribunal dated 5.8.2005 in O.A. No.50/2004 allowing the application of the respondents. The respondents had approached the Tribunal for quashing the order dated 19.2.2004 by which they were reverted from the post of Inspector to Sub-Inspector. They also sought declaration that the review DPC held on 23-24 January, 2004 was illegal. They sought consequential benefits including continuity of service on the post of Inspector.

Brief facts of the case are that the respondents were promoted as Inspectors vide order dated 9.8.1996 on condition that “their promotion to the grade of Inspectors shall be further subject to the condition that in the event of their senior Sub-

Inspectors whose cases are kept in sealed cover are promoted they may be reverted if there are no available vacancies in the higher grade." As the circumstance would have been in course of time, Sub-Inspectors, Senior Sub-Inspector who had been by passed while giving promotion to the respondents on account of certain adverse remarks and their cases have been considered by following the sealed cover procedure, and accordingly became eligible for promotion to the post of Inspector. As vacancies were not available against which the respondents could be adjusted, they were reverted to the post of Sub-Inspectors in accordance with the aforequoted condition of promotion. The Tribunal applying ratio of the decision in H.L. Trehan and others Vs. Union of India and others AIR 1989 SC 568 held that the reversion of the respondents was in violation of the rules of natural justice. By virtue of promotion of the respondents they came to acquire vested right, the Tribunal took the view that respondents had continued on the post for a long period. The Tribunal also took the view that the department had withheld the requisite details of subsequent/future vacancy position but instead of directing the department to consider the cases of respondents against the subsequent years observed that the "respondents would do well by resorting to create supernumerary posts till the persons promoted in excess are adjusted against subsequent/future

vacancies."

We are of the view that notwithstanding the fact that the respondents were promoted by regular DPC by reason of the condition imposed incorporated in the promotion order, their promotions was continuously and dependent on the outcome of the proceedings against the Senior Sub-Inspectors. Indeed, even if such condition has not been specifically incorporated the cases of Senior Sub-Inspectors having been considered by observing the sealed cover procedure, on getting clean chit, they would have been entitled to promotion on the post of Inspectors. It hardly need be emphasised that persons can be promoted against available subsequent vacancies and if vacancies were no more available after promotion of the Senior Sub-Inspectors, it goes without saying that the respondents had to make room for them.

We find sufficient force in the submission of the counsel for the respondents that the department should have considered the cases of the respondents against the subsequent vacancies. It was stated that the department has considered cases against vacancies upto 2001-02 and in view of the availability of vacancies for the year 2002-03 and onwards, they would have been promoted against such vacancies. It was stated that department was

required to ascertain the yearwise vacancies and then consider the cases of eligible persons for promotion against such vacancies.

In the facts and circumstance of the case, having regard to the fact that the respondents have continued to hold the post of Inspectors for more than a decade and further considering the fact that the vacancies should be available during the years 2002-03 and onwards, it would be in the interest of justice to direct the petitioners to immediately convene the regular DPC, so that the cases of the respondents and others may be considered and on the ground of being fit, they may be promoted against the post of Inspectors. In course of hearing, an apprehension was made by counsel for the respondents that the respondents may be held ineligible for such promotion. The apprehension does not appear to be any foundation. There can be a little ___for eligibility and has to be considered on relevant date, meaning thereby the date on which the relevant vacancy occurred. In other words, if the respondents were eligible for promotion against such vacancies during 2002-03, their cases have to be considered subject to eligibility with reference to those vacancies and the fact that if they may have found ineligible they will not take stand in that way.

Having thus considered the case of the

parties, we dispose of this writ petition with a direction to the petitioners to convene a regular DPC and consider the cases of the respondents and others for promotion against the post of Inspectors. Final decision should be taken within four months in the light of the above observations.

For the reasons stated above, the order of the Tribunal is set aside and the petition is disposed of with directions as mentioned above.

[MOHAMMAD RAFIQ],J. [S.N.JHA],CJ.

Praveen